

**REMARKS**

In view of the following remarks it is respectfully submitted that all of the presently pending claims are allowable and reconsideration is respectfully requested.

**Status of the Claims**

Claims 13 to 27 and 29 to 32 are pending. Claims 1 to 12 and 28 were previously canceled without prejudice or disclaimer of the subject matter recited therein.

**Information Disclosure Statement**

Applicants thank the Examiner for considering the previously filed Information Disclosure Statements, PTO-1449 papers and cited references.

**Statements of Well-Known Fact**

Applicants respectfully traverse all contentions of well-known fact to the extent that they are maintained and respectfully request that the Examiner provide specific evidence to establish those assertions and/or contentions under 37 C.F.R. § 1.104(d)(2) or otherwise. In particular, it is respectfully requested that the Examiner provide an affidavit and/or that the Examiner provide published information concerning these assertions. This is because the rejections of the claims are apparently being based on assertions that draw on facts within the personal knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions. *See* M.P.E.P. § 2144.03.

**Rejections under 35 U.S.C. §103(a)**

Claims 13 to 15, 17 to 20, 22, 23, 25, 27, and 29 to 31 were rejected under 35 U.S.C. §103(a) as being unpatentable over the combination of U.S. Patent No. 6,459,682 to Ellesson et al. ("Ellesson") and EP 1039691 to Farrell et al. ("Farrell"). Claims 16, 21, 24, 26, and 32 were rejected under 35 U.S.C. §103(a) as being unpatentable over Ellesson. Applicants respectfully traverse the rejections.

As an initial matter, Applicants respectfully point out what appears to be a typographical error in the Final Office Action. Under the heading "Claim Rejections – 35 USC § 103," the Final Office Action asserts that claims 13 to 15, 17 to 20, 22, 23, 25, 27 and 29 to 31 "are rejected under 35 U.S.C. 102(e) as being anticipated by Ellesson et al. ... in view of Farrell et al. ... ." Final Office Action, page 2.

Independent claims 13 and 29 of the present application recite "associat[ing] the characteristic values with a time of the combining" of the measured values into the characteristic values. It is respectfully submitted that neither Ellesson nor Farrell teaches or suggests associating the characteristic values with a time of the combining, as recited. As noted by the Examiner, Ellesson does not teach this feature. *See* Office Action mailed February 14, 2007 at page 8, section 21, and Final Office Action mailed June 27, 2007 at page 3, first paragraph. Nor does Farrell teach or suggest this feature. In contrast, the time stamps of the NARs of Farrell merely indicate the time a data record was produced, and have nothing to do with a time of a

combining of the measured values into characteristic values, nor an association of the characteristic values with the time of the combining, as recited.

Indeed, the time stamps of Farrell are provided so that the accounting process can discriminate between multiple NARs generated by a component. *See* Farrell, col. 9, lines 49 to 54. In contrast, as discussed in the present specification, in the present invention the recited aggregation time allows the calculated characteristic values to be associated with the original measured data (*see* specification at paragraph 51), not for discriminating between multiple items (NARs). Thus the recited aggregation time serves a completely different function than the time stamp of Farrell. The time stamp of Farrell has nothing to do with a time of combining of measured data into characteristic values. Indeed, Farrell does not teach or suggest such combining at all. It is respectfully submitted that the time stamps of Farrell would therefore not provide any teaching or suggestion to arrive at the invention recited in independent claims 13 and 29 of the present application.

The Final Office Action states that “time-stamping a data record is a popular way of associating the data with certain related events along the time line.” Final Office Action, page 3, paragraph 2. To the extent the Final Office Action is asserting that the feature of “associat[ing] the characteristic values with a time of the combining” of the measured values into the characteristic values is well-known, Applicants again respectfully traverse these contentions to the extent that they are maintained and respectfully requests that the Examiner provide specific evidence to establish those assertions and/or contentions under 37 C.F.R. § 1.104(d)(2) or

otherwise. In particular, it is respectfully requested that the Examiner provide an affidavit and/or that the Examiner provide published information concerning these assertions. This is because the rejections of the claims are apparently being based on assertions that draw on facts within the personal knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions. *See also* M.P.E.P. § 2144.03.

Because neither Ellesson nor Farrell teaches or suggests the above-recited features of claims 13 and 29, neither of these references alone nor a combination of them, to the extent proper, could render either of claims 13 or 29 or any of their respective dependent claims unpatentable.

As for the requirement that a suggestion or motivation for making the proposed combination must be demonstrated, the present rejection is plainly deficient. The Final Office Action provides no indication whatsoever of a suggestion or motivation by Ellesson or Farrell to make the proposed combination. Merely because certain reference can be combined or modified does not render the resultant combination obvious unless a basis for the desirability of the combination is shown. At least a convincing line of reasoning must be presented to support the rejection. It is respectfully submitted that the Final Office Action has not provided any convincing line of reasoning for making the proposed modification. The mere unsupported and conclusory assertion provided in the Final Office Action that “[i] would have been obvious ... to associate time information in Ellesson’s collected statistic because it makes Ellesson’s traffic prediction/regulation more accurate” hardly amounts to a convincing line of reasoning. Final

Office Action, page 3, second paragraph. As such, the present rejection is apparently based on nothing more than improper hindsight, which cannot support an obviousness rejection. Since there is no motivation or suggestion by Ellesson or Farrell to make the proposed combination, it is respectfully submitted that the combination of Ellesson and Farrell do not render unpatentable claims 13 or 29 or any of their respective dependent claims unpatentable for at least this additional reason.

In view of the above remarks, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 13 to 15, 17 to 20, 22, 23, 25, 27, and 29 to 31 under 35 U.S.C. §103(a) based on the combination of Ellesson and Farrell and of claims 16, 21, 24, 26, and 32 under 35 U.S.C. §103(a) based on Ellesson.

## CONCLUSION

In view of the foregoing it is believed that claims 13 to 27 and 29 to 32 are in condition for allowance and it is respectfully requested that the application be reconsidered and that all pending claims be allowed and the case passed to issue.

If there are any other issues remaining which the Examiner believes could be resolved through a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below.

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Respectfully submitted,

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